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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,363	11/01/2001	Ali Bani-Hashemi	2001P18496US	7290

7590

05/05/2004

Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
186 Wood Avenue South
Iselin, NJ 08830

EXAMINER

MANTIS MERCADER, ELENI M

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/004,363

Applicant(s)

BANI-HASHEMI ET AL.

Examiner

Eleni Mantis Mercader

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 2/27/04 have been fully considered but they are not persuasive. With respect to Applicant's arguments and amendments referring to three dimensional surface imaging and its matching to internal three dimensional structure so that proper alignment with the previously taken images and the current position of the patient, the Examiner directs the Applicant's attention to Cosman'072 and in particular Figure 6 and see col. 12, line 26 through col. 14, line 20. The Double Patenting rejections are maintained as no Terminal Disclaimers were filed.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3, 5-18 and 20-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,535,574. Although the conflicting claims are not identical, they are not patentably distinct from each other because they represent alternate variations and groupings.

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4. Claims 1-3, 5-18 and 20-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/051,588. Although the conflicting claims are not identical, they are not patentably distinct from each other because they represent alternate variations and groupings.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-3, 5-18 and 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Cosman'072.

Regarding claims 1 and 17, Cosman'072 teaches a method comprising:

acquiring first data representing a three-dimensional surface of at least a portion of a patient's body while the patient is in a first position (col. 3, lines 34-39; col. 4, lines 13-24; col. 4, lines 35-47; describing how the cameras track in a three-dimensional space the surface of the patient marked by trackable markers and also see col. 16, lines 8-42, describing video views and also see col. 18, lines 34-40; describing 3D surface contour matching);

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and acquiring second data representing at least one internal portion of the patient's body while the patient is in the first position (col. 3, lines 29-34).

Regarding claims 2, 14, and 18 Cosman'072 teaches determining a radiation treatment plan based on the first data, the second data, and on data representing a physical layout of a radiation treatment station and a treatment planning device for generating a radiation treatment plan based on the computed tomography data, the first three-dimensional surface data, and data representing a physical layout of a radiation treatment station (see col. 4, lines 48-61 and col. 5, lines 8-45).

Regarding claim 3, Cosman'072 teaches determining the radiation treatment plan comprising: determining a position of a radiation treatment device that will avoid the patient's body and that will allow irradiation of a portion of the at least one internal portion (see col. 7, lines 18-24).

Regarding claims 5 and 12 Cosman'072 teaches, the first position being a position that is substantially maintained during a computed tomography scan (see col. 10, lines 19-37), and comparing the CT information with the camera information to determine whether the positional information matches (see col. 10, lines 37-50).

Regarding claim 6, Cosman'072 teaches moving the patient so that the second position corresponds to the first position (see col. 10, lines 50-57 and see col. 13, lines 29-42).

Regarding claim 7, Cosman'072 teaches changing a radiation treatment plan for the patient based on a difference between the first position and the second position (see col. 6, lines 39-59).

With respect to claims 8-11 and 20-23 any movements outside of acceptable thresholds or otherwise stated outside of the body boundaries, are detected and corrections are made by moving the patient's body in order to deliver effective treatment (col. 16, lines 60-67 and col. 17, lines 1-48).

Regarding claim 13, Cosman'072 teaches a computed tomography scanning device for acquiring computed tomography data of a patient while the patient is in a scanning position (col. 20, lines 28-31); and a first surface photogrammetry device for acquiring first three-dimensional surface data of at least a portion of the patient's body while the patient is in the scanning position (col. 20, lines 36-41 and 47-52 and col. 18, lines 34-40).

With respect to claim 15, Cosman'072 further teaches a controller for determining if the treatment position corresponds to the scanning position based on the first three-dimensional surface data and the second three-dimensional surface data (see col. 6, lines 50-59 and col. 10, lines 37-50).

Regarding claim 16, Cosman'072 further teaches the first surface photogrammetry device and the second surface photogrammetry device are a same device (see alternative embodiments of Figures 5 and 6 wherein either 2 cameras or three cameras are used, so in the embodiment of Figure 11, the function of two cameras is accomplished by a single camera or alternatively stated, two cameras are used as opposed to three).

Cosman'072 further teaches three dimensional surface imaging and matching to internal three dimensional structure so that proper alignment with the previously taken images and the current position of the patient (see Figure 6 and see col. 12, line 26 through col. 14, line 20).

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Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

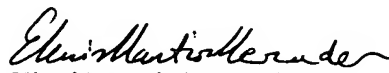
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eleni Mantis Mercader whose telephone number is 703 308-0899. The examiner can normally be reached on Mon. - Fri., 8:00 a.m.-6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Eleni Mantis Mercader
Primary Examiner
Art Unit 3737

EMM